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Lynne Finley  
District Clerk  
Collin County, Texas  
By Alexis Scherff Deputy  
Envelope ID: 61180402

Cause No. 471-00047-2022

SOON KIM, Individually and as  
Representative of the Estate of  
YOON KIM, YUN MI KIM, and YUN  
HEE KIM

In the District Court

Collin County, Texas

Plaintiffs,  
v.

471<sup>st</sup> Judicial District

24 HOUR FITNESS USA, LLC f/k/a 24  
HOUR FITNESS USA, INC. AND 24  
HOUR FITNESS WORLDWIDE, INC.,

Defendants.

**24 Hour Fitness USA, LLC f/k/a 24 Hour Fitness USA, Inc. and 24 Hour  
Fitness Worldwide, Inc.'s Original Answer**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, 24 Hour Fitness USA, LLC f/k/a 24 Hour Fitness USA, Inc. and 24 Hour Fitness Worldwide, Inc. (hereinafter referred to as "Defendant"), in the above-entitled and numbered cause of action and files this its Original Answer to Plaintiffs' Original Petition, as follows:

**I. General Denial**

As authorized under the Texas Rules of Civil Procedure, Defendant asserts a general denial as to all claims asserted against it and demands strict proof of the same.

**II. Affirmative Defenses**

Without waiving or limiting the general denial above, or any of the defenses below, Defendant further pleads each of the following defenses (and in the alternative where applicable):



1. Defendant pleads the applicability of Chapter 33 of the Texas Civil Practice and Remedies Code and all rights, privileges, and remedies afforded or available to it pursuant to same as an affirmative defense, including but not limited to sections 33.001, 33.003, 33.012 and 33.013 of the Texas Civil Practice and Remedies Code.

2. Defendant asserts that no act or omission on its part was a proximate cause, cause in fact, or producing cause of the accident made the basis of suit and/or Plaintiffs' alleged injuries or damages.

3. Defendant would show that the damages claimed by Plaintiffs, if found, resulted from a cause new and independent from any action or omission on the part of this Defendant and that was not foreseeable by this Defendant and which destroys any alleged causal connection to any alleged act or omission on the part of this Defendant.

4. Further, Defendant pleads that any injuries, damages, or liability complained of by Plaintiffs are the result, in whole or in part, of intervening new and independent causes, and are not the result of any act or omission on the part of Defendant.

5. In the alternative, Plaintiffs' claims must be barred or limited, in whole or part, to the extent he is found contributorily or comparatively negligent.

6. Further, in the alternative, Plaintiffs have waived the right to sue for the damages Plaintiffs seek and/or released Defendants from liability.

### **III. Limitations on Damages**

7. Defendant pleads that Plaintiffs may only recover medical or healthcare expenses that were actually paid or that were incurred by or on Plaintiffs' behalf.

8. Defendant asserts the limitations on the recovery of damages for loss of earnings loss of earning capacity, and/or loss of contributions of a pecuniary value, to the



net loss after reduction for income tax payments or unpaid tax liability as set forth in Section 18.091 of the Texas Civil Practice and Remedies Code.

9. Defendant pleads that any award of interest that is in excess of the applicable market rate of interest during the relevant time period would be arbitrary, violate public policy, and violate the due process and equal protection guarantees of the Texas and United States Constitutions.

#### **IV. Punitive Damages Limitations**

10. In the event that punitive and/or exemplary damages are sought at any time, then Defendant further asserts the provisions of Sections 41.007, 41.008, 41.010, 41.011 and 41.012 of the Texas Civil Practice & Remedies Code and the punitive damages limitations contained therein as an affirmative defense.

11. Defendant reserves the right to amend this Answer, following opportunity to investigate these claims as is its rights under the Texas Rules of Civil Procedure and laws of this State.

#### **V. Conclusion**

For these reasons, Defendant respectfully seeks judgment in its favor, an award of court costs, and all other relief to which it may be entitled.

[Signature on the next page]



Respectfully submitted,

**BROWN SIMS, P.C.**

By: /s/ Nelson Skyler

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**ATTORNEYS FOR DEFENDANT**

**Certificate of Service**

I certify that I have served a true and correct copy of this instrument on all attorneys of record, and/or pro-se litigants on January 26, 2022 in accordance with the Texas Rules of Civil Procedure.

Via e-mail:

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/s/ Nelson Skyler  
Nelson Skyler



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 Status as of 1/27/2022 10:25 AM CST

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